

ARTICLE 5

SPECIAL PERMITS AND SPECIAL EXCEPTIONS

PART 5

5-000

GENERAL PROVISIONS

5-001

Purpose and Intent

1. There are certain uses which, by their nature, can have an undue impact upon or be incompatible with other uses of land within a given district. These uses as described may be allowed to locate within certain designated districts under the controls, limitations and regulations of a special permit.
2. The BZA shall issue special permits under the provisions of this Article when it determines that such use will be compatible with the neighborhood in which it is to be located.
3. In addition, there are instances similar to those in which a use may be appropriate under a special permit, including cases in which standards and regulations specified for certain uses allowed within a given district should be allowed to be varied within limitations in the interest of sound development. Such uses as described may be allowed to locate within a given designated district under the provisions of special exceptions.
4. The Board shall issue special exceptions under the provisions of this Article when it concludes that such action will not be incompatible with existing or planned development in the general area. While the same standards shall be applied in the evaluation of the impact and compatibility of uses proposed under both the special permit and special exception provisions of this Article, the issues involved in special permits under consideration by the BZA involve primarily the immediate neighborhood to be affected. Special exceptions involve issues concerning the neighborhood as well as potential impacts on the general area, the Comprehensive Plan and, in some cases, the County as a whole. (Special exceptions can be granted by the Board. Special permits can be granted by the BZA only.)
5. The BZA and Board shall stipulate, where appropriate, conditions and restrictions in the granting of special permits and special exceptions respectively to assure the use will be compatible with the neighborhood in which it is to be located and will meet the standards contained herein; or where that cannot be accomplished, to deny the use as not in accord with adopted plans and policies or as being incompatible with existing uses or development allowed by right in the area.
6. The burden of proof lies with the applicant to demonstrate that the proposed use is consistent with the purpose and intent of the

applicable zoning district and satisfies the standards contained hereinafter.

5-002

Authorization

1. In consideration of an application filed with the Zoning Administrator, the BZA and the Board may authorize the establishment of those uses that are expressly listed respectively as special permit uses and special exception uses in a particular zoning district provided, however, that no such permit shall be required for a use allowed as a permitted use in such district.
2. No special permit use or special exception use shall be authorized unless such use complies with all the applicable standards of this Article 5 and all other applicable requirements of this Ordinance.

5-003

Limits on Authority

1. Neither the BZA nor the Board shall have the authority to vary, modify or waive any of the regulations or standards prescribed for any use or purpose for which a special permit or special exception is required, and any such modification, variance or waiver shall ipso facto nullify the action of the BZA or Board in issuing, respectively, any special permit or special exception hereunder. The discretion of the BZA and Board shall be limited to determinations with respect to the standards applying to the use or purpose covered by the applicant.
2. This provision shall not preclude any concurrent, but jurisdictionally separate, proceedings applying to the same property, in which an application is made for a variance on an allegation of hardship.
3. The jurisdiction of the BZA and the Board, with respect to any use or purpose for which such body is authorized to issue, respectively, special permits and special exceptions, shall be confined to the consideration of the question of conformity to the provisions of this Ordinance. The BZA and Board shall issue respectively, the special permit or special exception applied for, subject to whatever conditions and restrictions are deemed necessary and appropriate under the provisions of Section 007 below, provided that so conditioned and restricted all applicable requirements of this Ordinance are met.

5-004

Status of Special Permit Uses and Special Exception Uses

1. Any use for which a special permit is granted by the BZA or a special exception is granted by the Board, and which complies with the specific requirements of this Ordinance and those conditions and restrictions which may be imposed in accordance with Section 007 below, shall be deemed to be a permitted use on the lot for which it was approved.
2. Once a special permit or special exception has been granted, however, the use shall not be enlarged, extended, increased in intensity or relocated unless an application is made for a new special permit or special exception; except that the BZA and the Board may specifically waive or modify requirements for obtaining additional permits for the enlarging, extending, increasing in intensity or relocation of previously approved special permit or special exception uses in unusual cases when the change is not significant.

5-005

Establishment of Categories

For the purpose of applying specific conditions upon certain types of special permit and special exception uses and for allowing such uses to be established only in those zoning districts which are appropriate areas for such uses, all special permit and special exception uses are divided into categories of associated or related uses as hereinafter set forth in this Article 5.

5-006

General Standards

In addition to the special standards set forth hereinafter with regard to particular special permit and special exception uses, all such uses shall also satisfy the following general standards:

1. The proposed use shall be such that it will not adversely affect the use or development of neighboring properties. It shall be in accordance with the applicable zoning district regulations and the applicable provisions of the adopted Comprehensive Plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and/or use of adjacent or nearby land and/or buildings or impair the value thereof.
2. The proposed use shall be such that pedestrian and vehicular traffic generated will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood and on the streets serving the site.
3. In addition to the standards which may be set forth in this Article for a particular category or use, the BZA and Board may require

landscaping, screening, yard requirements or other limitations found to be necessary and appropriate to the proposed use and location.

4. Open space shall be provided in an amount at least equal to that specified for the zoning district in which the proposed use is located.
5. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Parking and loading requirements shall be in accordance with the provisions of Article 7.
6. Signs shall be regulated by the provisions of Article 8, except as may be qualified in the Parts that follow for a particular category or use. However, the BZA and the Board, under the authority presented in Section 007 below, may impose more strict standards for a given use than those set forth in this Ordinance.
7. The future impact of a proposed use will be considered and addressed in establishing a time limit on the permit, if deemed appropriate. Existing and recent development, current zoning and the Comprehensive Plan shall be among the factors used in assessing the future impact of the proposed use and whether reconsideration of the permit after a stated period of time would be necessary and appropriate for the protection of properties in the vicinity and to ensure implementation of the Comprehensive Plan.
8. The proposed use shall be such that air quality, surface and groundwater quality and quantity, are not degraded or depleted to an extent that would hinder or discourage the appropriate development and/or use of adjacent or nearby land and/or buildings or impair the value thereof.
9. Except as provided in this Article, all uses shall comply with the lot size, bulk regulations, and performance standards of the zoning district in which located.

5-007

Conditions and Restrictions

1. General - The BZA and the Board respectively, in granting special permits or special exceptions, may impose such conditions, safeguards and restrictions upon the proposed uses as may be deemed necessary in the public interest to secure compliance with the provisions of this Ordinance.

Conditions may include, but need not be limited to the following:

- A. The hours of operations.
- B. Access to the subject property.
- C. Protection of surface and groundwater.
- D. Lighting of the site, to include intensity and shielding, so as not to adversely affect adjacent or nearby property owners.
- E. Adequate sewer and water supplies.
- F. Sound limitations as needed to ensure peaceful enjoyment of neighbors.
- G. The location, size, height, design of building, walls, fences, landscaping and buffer yard.
- H. Covenants and/or homeowners association for maintenance of applicable restrictions.
- I. Timing or phasing of development.
- J. Utilities underground.
- K. Control of smoke, dust and odor.
- L. Bonding as required to ensure standards are met and plans are implemented.

5-008

Time Limitations, Extensions, Renewals

In addition to the time limit set forth in this Article, the BZA and the Board, respectively, may require as a condition to the issuance of any special permit or special exception, that it shall be issued for a specified period of time; that it may be subsequently extended for a designated period by the Zoning Administrator, or that it may be periodically renewed by the body granting such approval. The procedure of granting an extension or renewal shall be as presented in Section 012 and 013 below.

5-009

Application for Special Permit or Special Exception

1. An application for a special permit or special exception may be made by any property owner, owner of an easement, possessor of the right of entry under the power of eminent domain, lessee, contract purchaser, or any official, department, board or bureau of any government. A contract purchaser, lessee or owner of an easement must file with the application a copy of the contract or some form of written statement which indicates the endorsement of the application by the property owner.

2. The application shall be filed with the Zoning Administrator on forms provided by the County. The application shall be complete and shall be accompanied by those submission requirements set forth in Section 011 below, such specific information as may be required for a given category or use, and such additional information as may be required by the BZA or Board. The application shall be accompanied by a fee established in accordance with the provisions of Section 13-107. No application shall be deemed to be on file with the County until all required submissions and payments have been presented.
3. The Zoning Administrator shall refer the application to any agency or review body as may be specified for a particular Category or use or as deemed appropriate by the Zoning Administrator. Such referral will be made expeditiously upon filing of the application. The Zoning Administrator will take action necessary to see that the advertising requirements of Section 13-111 are met for hearings conducted in connection with this Section.
4. Application for a special permit shall be filed not later than twenty-four (24) calendar days prior to the date of the BZA meeting at which it will first be placed on the agenda. At that meeting a hearing will be conducted concerning the application in accordance with the provisions of Section 13-110.
5. Application for a special exception shall be submitted not later than forty (40) calendar days prior to the first Planning Commission meeting at which it may be considered and must be filed not later than thirty (30) calendar days prior to said meeting. An application is considered officially filed if the Department accepts it after review. At the first meeting a hearing will be conducted concerning the application in accordance with the provisions of Section 13-110. The Commission shall, not later than its next regular monthly meeting, unless an extended period is mutually agreed to by the applicant and the Commission, forward a recommendation concerning the proposal to the Board. Failure to act at this time, unless tabled with the concurrence of the applicant, shall be deemed action to recommend approval.
6. The Board shall hold a public hearing on all applications for special exceptions in accordance with the provisions of Section 13-110, at its earliest regularly scheduled meeting for which the notice requirements of Section 13-111 can be met following the date of Commission action on a recommendation concerning such applications.
7. The BZA or Board shall render a decision on all applications for special permits and special exceptions, respectively, not later than at its body's second regular monthly meeting following the hearing (except for cases delayed in accordance with Section 5-010). This

time limit may be extended by either body, through the consent of the applicant, and if comments or reports have not been received from other agencies and/or review bodies (other than the Commission) which are either specified for a particular category or use, or are deemed necessary by the BZA or Board.

5-010

Site Location Plan Approval

1. Review by the Commission in accordance with the provisions of Section 15.1-456, Code of Virginia, shall be conducted concurrently with the Commission's review of special exceptions concerning the use, if such special exception is required.
2. The Commission shall hold a public hearing in accordance with the provisions of Section 13-110 of this Ordinance concerning all uses subject to review in accordance with the provisions of Section 15.1-456, Code of Virginia, as amended.

5-011

Submission Requirements

- I. Special Permits
All applications for special permit shall be accompanied by the following items in addition to those items that may be listed for a particular category in parts that follow:
 1. Explicit statement of proposed use (may be on application form).
 2. A scale drawing(s) at a scale of not less than 1"=100' (1"=200' for residential development, major, in the Rural and R-1 zoning districts) showing:
 - A. Property lines.
 - B. Abutting streets with names or route numbers.
 - C. Location of all existing and proposed buildings or uses.
 - D. Highway entrance(s) and driveways.
 - E. Off-street parking and loading spaces, showing number of spaces provided.
 - F. Front, side and rear elevations of any proposed building.
 - G. Landscaping if applicable.
 - H. Such drawing shall be submitted in four (4) copies on sheets not exceeding 30 x 42 inches.

3. A copy of the applicant's purchase agreement or sales contract if applicant is a contract owner.
4. Any other information requested by the BZA (not required as part of original submission).

II. Special Exceptions

All applications for special exception shall be accompanied by the following applicable items in addition to those items that may be listed for a particular category in the parts that follow:

1. Ten (10) copies of an application on forms provided by the County, completed and signed by the applicant.
2. Ten (10) copies of a Conflict of Interest Statement provided by the County, completed and signed by the applicant.
3. Ten (10) copies of a plat drawn to a designated scale determined by consultation with the Director or his designated agent, containing the following information as applicable:
 - A. Boundaries of entire property, with bearings and distances on all boundary lot lines.
 - B. Total area of the property in square feet or acres.
 - C. Scale and arrow north.
 - D. Public right(s)-of-way, including names, route numbers and width.
 - E. Proposed means of ingress and egress to the property from a public street(s).
 - F. Parking spaces, existing and/or proposed, indicating minimum distance from the nearest property line.
 - G. Where wells and/or septic fields are proposed, soils analysis/information indicating general feasibility of proposed use or indication that the subject property is served by public water and/or sewer. Where appropriate, a statement from the Health Department indicating that available facilities are adequate for the proposed use.
 - H. A map (3 inches by 3 inches) giving the general vicinity of the subject property.

- I. Where applicable seating capacity, usable outdoor recreation area, emergency access, bicycle parking, fencing, limits of clearing, landscaping and screening, outside lighting, loud speaker, required and/or proposed improvements to public right(s)-of-way.
 - J. Seal and signature of person certifying the plat.
4. Ten (10) copies of a statement of justification to include the following as applicable:
- A. Type(s) of operation(s).
 - B. Hours of operation.
 - C. Estimated number of patrons/clients/patients/pupils/etc.
 - D. Proposed number of employees/attendants/teachers, etc.
 - E. Qualifications of application and operators of the proposed use. Where applicable, submit a copy of professional or occupational certification or license.
 - F. Estimate of traffic impact of proposed use, including the maximum expected trip generation and the distribution of such trips by mode and time of day.
 - G. Vicinity or general area to be served by the use.
 - H. For other than residential development, description of building facade and architecture of proposed new building or additions
 - I. A statement that the proposed use conforms to the provisions of all applicable conditions, or, if any waiver, exception or variance is sought by the applicant from such ordinance, regulations, standards and conditions, such shall be specifically noted with the justification for any such modification.
5. Four (4) copies of the Fauquier County Parcel Identification Map with the subject property highlighted in red.
6. OPTIONAL - Photographs of the property showing existing structures, terrain and vegetation.
7. If the applicant is not the owner of the property involved in the application, evidence must be submitted showing that the applicant will have the right to use the property as proposed.

A copy of a properly executed lease or contract to purchase, with financial terms deleted if so desired, will normally suffice to meet this requirement.

8. Where applicable, any other information as may be required by the provisions of Articles 4 and 5 or requested by the Board or Commission which may not be required as a part of the original submission.
9. An application fee as provided for in accordance with Section 13-107.

5-012

Extension of Special Permit or Special Exception (by the Zoning Administrator)

1. The application for an extension of a special permit or special exception shall be filed with the Zoning Administrator in accordance with the provisions of Paragraphs 1 and 2 of Section 009 above. The application shall be filed within thirty (30) to sixty (60) days before the expiration date of the special permit or special exception.
2. The Zoning Administrator shall inspect the use; review the applicant's record of compliance with those conditions, standards and restrictions previously imposed by the BZA or Board; and make a determination on whether the special permit or special exception use still satisfies the applicable standards of this Ordinance. The Zoning Administrator shall also notify the applicable approving authority that request has been filed.
3. Upon a favorable finding, the Zoning Administrator shall issue an extension of the special permit or special exception for the period of time that may be specified for a particular category or use or that may have been specified by the BZA or the Board. Upon an unfavorable finding, the application shall be denied and such an action shall be subject to appeal in accordance with the provisions of Part 3 of Article 13.
4. All ordinances and regulations, in effect at the time an application for an extension is filed, shall apply to the use in the same manner as when a new special permit or special exception is issued by the BZA or Board except that no alteration of a structure shall be required if such structure was in conformity with the provisions of the Building Code and other applicable regulations at the time the special permit or special exception was first granted.

5-013

Renewal of a Special Permit or Special Exception (by the BZA or Board)

1. The procedure for the renewal of a special permit or special exception shall be the same as specified in Section 009 above for the issuance of the original permit or exception, unless the BZA or Board shall specifically waive or modify such procedure for a given permit or exception or unless the procedure is qualified for a particular category or use. The application for a renewal shall be filed ninety (90) days before the expiration date of the permit or exception.
2. All ordinances and regulations, in effect at the time an application for a renewal is filed, shall apply to the use in the same manner as when a new special permit or exception is issued by the BZA or Board except that no alteration of a structure shall be required if such structure was in conformity with the provisions of the Building Code and other applicable regulations at the time the special permit or special exception was first granted.

5-014

Expiration of a Special Permit or Special Exception

With the exception of public uses, whenever a special permit or special exception is issued by the BZA or Board, the activity authorized thereby shall be established and construction authorized shall be diligently prosecuted within such time as the BZA or Board may have specified or, if no such time has been specified, then within one (1) year after the effective date of such permit or exception, unless an extension shall be granted by the BZA or Board because of the occurrence of conditions unforeseen at the time of the granting of the special permit or special exception. If construction has not commenced within a period of one (1) year, unless an extension is granted, such special permit or special exception shall automatically expire without notice.

5-015

Revocation of a Special Permit or Special Exception

1. Unless a time limit is specified for a special permit or special exception, the same shall be valid for an indefinite period of time but shall be revocable on the order of the BZA or Board at any time because of the failure of the owner or operator of the use covered by the permit or exception to observe all requirements of law with respect to the maintenance and conduct of the use and all conditions in connection with the special permit or special exception that were designated in issuing the same.
2. Before revoking any special permit or special exception, however, the BZA or Board shall give the holder thereof at least fifteen (15) days written notice of violation. The BZA or Board shall hold a hearing on the revocation of the permit or exception and shall give the applicant at least fifteen (15) days advance written notice of the hearing date.

3. The foregoing provisions shall not be deemed to preclude the use of the other remedy prescribed by law or by this Ordinance with respect to violations of the provisions of this Ordinance.

5-016

Contesting a Special Exception Decision

Every action contesting a decision of the Board granting or failing to grant a special exception shall be filed within thirty (30) days of such decision with the Circuit Court having jurisdiction of the land affected by the decision. However, nothing in this subsection shall be construed to create any new right to contest the action of a local governing body.